

RAS-1613

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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March 3, 2000

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In the Matter of)
)
Vermont Yankee Nuclear Power Corporation)
)
and)
)
AmerGen Vermont, LLC)
)
(Vermont Yankee Nuclear Power Station))

Docket No. 50-271-LT
License No. DPR-28
(License Transfer)

APPLICANTS' ANSWER TO
CITIZENS AWARENESS NETWORK'S
REQUEST FOR HEARING AND PETITION TO INTERVENE

INTRODUCTION

AmerGen Vermont, LLC (AmerGen Vermont) and Vermont Yankee Nuclear Power Corporation (VYNPC) (hereinafter jointly referred to as Applicants) hereby submit this Answer to "Citizens Awareness Network's Request for Hearing and Petition to Intervene in the License Transfer for Vermont Yankee Nuclear Power Station, Request for Stay of Proceeding, and Request for Subpart G Hearing Due to Special Circumstances" (Petition). Most of the issues raised by the Petition involve attacks on the Commission's regulations or complaints about the Subpart M procedures, the past operational performance of the plant, or other issues

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unrelated to the license transfer. None of these issues are appropriate or cognizable in this proceeding.

In the Petition, Citizens Awareness Network (CAN or Petitioner): (1) requests that the Commission “stay the instant proceeding (and/or decision);”^{1/} (2) seeks “a substantive subpart G hearing, or, in the alternative, a substantive subpart M hearing at the preliminary stage with the possibility of converting to a subpart G hearing if necessary;”^{2/} and (3) submits seven numbered issues, some with subparts, in support of the hearing request. As discussed below, CAN lacks standing to participate in this proceeding. Furthermore, the procedural relief requested by CAN is inappropriate and unjustified, and would undermine the very purpose of Subpart M. Finally, none of the issues offered by CAN satisfies the requirements of 10 CFR § 2.1306. Accordingly, the Petition should be denied in its entirety pursuant to 10 CFR § 2.1308.

BACKGROUND

On January 6, 2000, AmerGen Vermont^{3/} and VYNPC submitted a joint “Application for Order and Conforming Administrative License Amendments for License Transfer (Facility Operating License No. DPR-28)” (Application). A notice of the Application was published on

^{1/} Petition, p. 1.

^{2/} Petition, p. 3.

^{3/} AmerGen Vermont is a wholly-owned subsidiary of AmerGen Energy Company, LLC (AmerGen), and was organized under the laws of Vermont to own and operate the Vermont Yankee Nuclear Power Station (Vermont Yankee). AmerGen, in turn, is owned by PECO Energy Company (PECO) and British Energy, Inc. (BE Inc.), a wholly-owned subsidiary of British Energy plc. (British Energy). PECO and BE Inc. each hold a 50% ownership in AmerGen.

February 3, 2000. *Notice of Consideration and Approval of Transfer of Facility Operating Licenses and Conforming Amendment, and Opportunity for a Hearing*, 65 Fed. Reg. 5376 (2000). The notice offered an opportunity for interested persons to request a hearing on the license transfer, and specifically stated that any requests for hearing and petitions to intervene must comply with the requirements of 10 CFR § 2.1306, which sets forth the requirements for hearing requests and petitions to intervene. The notice also referenced 10 CFR § 2.1308(a), which identifies the particular factors the Commission will consider in evaluating a hearing request or intervention petition.

CAN has sought a hearing and intervention in its Petition dated February 22, 2000. As discussed below, CAN has failed to provide sufficient grounds to support its request for procedural relief. In addition, it has neither established standing nor identified any issues appropriate for consideration in a Subpart M proceeding. Accordingly, the Petition should be denied.

ARGUMENT

I. PETITIONER IS NOT ENTITLED TO THE PROCEDURAL RELIEF REQUESTED

As discussed more fully below, the Petitioner's request for a stay of this proceeding and use of Subpart G procedures is improper and lacks merit. There is no reasonable basis for delaying Nuclear Regulatory Commission (NRC or Commission) review of the pending Application. Furthermore, the additional adjudicatory procedures requested by CAN are wholly inappropriate under Subpart M, which governs license transfer proceedings.

Granting Petitioner's request would undermine the very purpose of Subpart M's streamlined process for resolving issues associated with license transfer proceedings. In promulgating Subpart M, the Commission confirmed that "[t]he procedures are designed to provide for public participation in the event of requests for a hearing under these provisions, while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases." *Streamlined Hearing Process for NRC Approval of License Transfers*, 63 Fed. Reg. 66721, 66722 (1998). For the reasons set forth below, the NRC should deny Petitioner's request for procedural relief, because the request is inconsistent with the streamlined hearing process established by the Commission for license transfer proceedings.

A. Petitioner's Request for a Stay Directly Contradicts the Commission's Policy Against Delay in Acting on License Transfer Requests

CAN requests that the NRC stay its review of the Application and postpone any hearing on the Application until the Vermont Public Service Board (Vermont Board) issues a decision on matters related to the license transfer. (Petition, pp. 1-3). CAN also states that the "Internal Revenue Service [IRS] has yet to rule on AmerGen's private letter ruling request to relieve it from the tax consequences of acquiring the decommissioning trust funds for Vermont Yankee [the Vermont Yankee Nuclear Power Station] and the rest of AmerGen's fleet of nuclear generating stations," and "requests the NRC to deny or defer AmerGen's application until such time as the issue of tax consequences has been determined and AmerGen's financial responsibilities are clarified." (Petition, pp. 10-11.) In support of its request for delayed consideration CAN avers that: (1) certain decisions by the Vermont Board and/or IRS could

affect the ultimate acquisition of Vermont Yankee by AmerGen Vermont from VYNPC and, thus, the underlying need for a license transfer; and (2) it would be unduly burdensome for CAN to participate simultaneously in multiple proceedings before the NRC, Vermont Board, and Federal Energy Regulatory Commission (FERC).^{4/}

A lack of resources is not a sufficient basis for a stay. As the Commission has stated:

Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party from its hearing obligations.

Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981); *endorsed, Policy on Conduct of Adjudicatory Proceedings; Policy Statement*, 63 *Fed. Reg.* 41872 (1998). *See also Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1261 n.29 (1982) (holding that a continuance was not warranted based upon an intervenor's lack of resources).

Additionally, Petitioner's request should be denied because it is a direct challenge to the Commission's stated policy opposing delay in license transfer proceedings. Subpart M

^{4/} CAN also argues that this proceeding should be delayed or suspended to permit the Commission to evaluate the consolidation of nuclear power plant ownership in the nuclear industry. (Petition, p. 6). In fact, the Commission has issued Staff Requirements Memorandum COMNJD-99-006 directing the Staff to assess the policy implications of industry consolidation. However, there is no legal basis for suspending NRC review of an individual application that fully satisfies all existing NRC requirements, pending completion of a generic assessment of a matter that has no direct bearing on the adequacy of the application.

expressly directs the NRC staff to “promptly issue approval or denial of license transfer requests.” 10 CFR § 2.1316(a). The Commission re-emphasized the policy underlying section 2.1316(a) when it promulgated Subpart M, stating that “staff action on license transfer requests should not be delayed except for sound reasons.” 63 *Fed. Reg.* at 66725-26.^{5/}

Moreover, Petitioner wholly ignores decisions holding that the NRC’s independent statutory obligation to rule on issues within its jurisdiction in a timely and effective manner continues notwithstanding the existence of potentially related issues in simultaneous proceedings of another agency. *See, e.g., Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 884-85 (1984); *Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), LBP-85-46, 22 NRC 830, 832 (1985). Because the sale of a nuclear facility necessarily requires multiple regulatory approvals, simultaneous review and consideration by multiple agencies is not only efficient, but necessary in order to resolve issues in a timely and fair manner.

In fact, the Commission itself had the opportunity to address an essentially identical motion in the license transfer proceeding involving Nine Mile Point. As the Commission stated:

^{5/} Indeed, the Commission’s policy of avoiding unnecessary delay in its proceeding is well established. *See, e.g., Baltimore Gas & Electric Company* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-15, 48 NRC 45, 52 (1998) (“We have a regulatory responsibility which includes the avoidance of unnecessary delay or excessive inquiry in our licensing proceedings.”); *Nuclear Fuel Services, Inc.* (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975) (“fairness to all parties . . . and the obligation of administrative agencies to conduct their functions with efficiency and economy require that Commission adjudication be conducted without unnecessary delays,” *quoting* 10 CFR Part 2, Appendix A).

This multi-forum situation is especially common in license transfer proceedings involving nuclear power plants. In these cases, the transfer is often the subject of simultaneous regulatory proceedings before one or more appropriate state public utility commissions, the FERC, the Securities and Exchange Commission, the Internal Revenue Service, the Department of Justice and/or Federal Trade Commission, and the NRC. . . “it would be productive of little more than untoward delay were each regulatory agency to stay its hand simply because of the contingency that one of the others might eventually choose to withhold a necessary permit or approval.”

Niagara Mohawk Power Corp. (Nine Mile Point, Units 1 & 2), CLI-99-30, slip op. at 9-10 (1999) (citations omitted).

In summary, Petitioner’s request for a stay is contrary to long-standing Commission policy and practice, and should be denied.

B. Petitioner’s Request for a Subpart G Hearing Is Contrary to NRC’s Regulations and Is Without Basis

Petitioner also requests that the NRC abandon Subpart M’s streamlined hearing process in reviewing AmerGen Vermont’s Application and, instead, conduct a full evidentiary hearing pursuant to Subpart G, or, alternatively, specifically provide for such procedure later.

(Petition, pp. 3-4). This request is inconsistent with NRC’s regulations, is without basis and, therefore, should be denied.

The plain language of the regulations contained in Subpart M makes it clear that such relief is unavailable to Petitioners. In particular, 10 CFR § 2.1322(d) specifically states that “neither the Commission nor the Presiding Officer will entertain motions from the parties that request such special procedures or formal hearings.”

The Commission's regulations in 10 CFR § 2.1329 do provide for waivers of the rules, but only if "special circumstances" exist which demonstrate that "application of a rule or regulation would not serve the purpose for which it was adopted." CAN attempts to address § 2.1329, by arguing that all of "the matters in this license transfer are not strictly 'financial in nature' as contemplated in the promulgation of Subpart M." (Petition, pp. 3-4).^{6/}

However, Petitioner's argument does not provide a sufficient justification to waive the proceedings governed by Subpart M. In promulgating Subpart M, the Commission did not contemplate that license transfers would be "strictly financial in nature." Rather, it contemplated that petitioners might raise a full panoply of potential issues associated with transfer of ownership and operating authority of a single owner; financial qualifications and decommissioning funding; plant staffing and technical qualifications; and the appropriate scope of environmental review. *See, e.g., 63 Fed. Reg. at 66722-23, 66728-29.* That CAN is impermissibly seeking to litigate many technical or historic issues unrelated to license transfer and outside the scope of this proceeding is not a basis to depart from the established rules.

More fundamentally, Petitioner is mistaken in claiming that it cannot obtain a "full and fair hearing on license transfer on an expedited basis" using Subpart M procedures. (Petition, p. 4). In response to a comment that "the Subpart M informal procedures . . . will not be adequate to deal with the complex inquiry that could arise in a license transfer proceeding," the Commission has stated: "[The Subpart M procedures] provide ample opportunity for the

^{6/} As discussed in detail later in this Answer, many of the "safety" issues raised by the Petitioner are outside the scope of this proceeding. Therefore, such issues are not an appropriate basis for use of Subpart G procedures in this proceeding.

parties to raise appropriate issues and build a *sound evidentiary record for decision.*” 63 Fed. Reg. at 66723 (emphasis added).^{7/}

Finally, the Commission dealt with, and rejected, a very similar claim in *Nine Mile Point*. The petitioners in that case raised a number of different issues, including a number of financial and other issues related to the operation of the facility. The petitioners argued that Subpart M did not contemplate the full panoply of issues raised by the petitioners in that case. In rejecting the petitioners’ request, the Commission stated:

When promulgating Subpart M, we were well aware that most license transfer issues would be, like co-owners’ issues, financial in nature. At this early stage of the proceeding, it is by no means clear that the informal Subpart M process will not suffice to resolve *any issues that require litigation*.

Nine Mile Point, CLI-99-30, slip op. at 12 (emphasis added).

In summary, Petitioner’s motion to use Subpart G procedures is contrary to the Commission’s regulations, and the Petitioner has not provided a sufficient basis to waive those regulations. Consequently, the motion should be denied.

^{7/} Petitioner’s request for cross examination to ensure full development of a record is also misplaced. As referenced above, the NRC concluded that Subpart M’s procedures will produce a full record under all but the most unusual of circumstances. Cross examination would only assist the decision maker in circumstances in which the issues rest upon the credibility of a testifying witness. Petitioners have not suggested that the credibility of any witness or potential witness is at issue here.

II. THE PETITION DOES NOT ESTABLISH CAN'S STANDING TO INTERVENE

A. Legal Standards

To intervene as of right in a Subpart M proceeding, a petitioner must demonstrate that it has an interest that may be affected by the proceeding, *i.e.*, the petitioner must demonstrate standing. 10 CFR § 2.1306(a); *Nine Mile Point*, CLI-99-30, slip op. at 5.^{8/} To establish standing, a petitioner must satisfy both the procedural requirements of Subpart M and the judicial concepts of standing. *Id.* See generally, *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185 (1998). Subpart M and judicial concepts of standing necessitate a showing of three specific elements: (1) an “injury-in-fact” to the petitioner which must be “concrete and particularized,” actual or threatened (not “conjectural” or “hypothetical”), and within the “zone of interests” protected by the Atomic Energy Act of 1954; (2) a causal connection between the alleged injury and the action complained of; and (3) a likelihood that the relief requested by the petitioner will redress the alleged injury. *Nine Mile Point*, CLI-99-30, slip op. at 5; *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 118 S. Ct. 1003, 1016 (1998); *Bennett v. Spear*, 520 U.S. 154, 167 (1997). See generally, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Furthermore, “the burden of setting forth a clear and coherent argument for standing and intervention is on the petitioner.” *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, 49 NRC 185, slip op. at 11 (1999). The Commission is not

^{8/} See also 63 *Fed. Reg.* at 66723-24 (“new Subpart M does not alter the Commission’s usual requirement for standing to intervene in a proceeding that a person show an interest which may be affected by the outcome of the proceeding”).

expected or required “to sift through the parties’ pleadings to uncover and resolve arguments not advanced by the litigants themselves.” *Id.* Moreover, in a proceeding (such as a license transfer proceeding) that has no obvious potential for immediate offsite consequences, mere proximity to a plant is not sufficient to establish standing, and a petitioner is required to “allege in detail” a “specific injury” or threat to a member’s health and safety. *Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989); *Babcock and Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 51-52 (1994).

B. CAN’s Petition Fails To Satisfy the Legal Standards

The CAN Petition fails to meet these requirements for standing. In particular, it fails to adequately address the three basic elements required to support standing (injury-in-fact, causation, and redressability). It also fails to state with specificity how this proceeding will affect the interests of the Petitioner.

First, CAN identifies one of its members (Ms. Anne Britton) who lives near the plant and alleges that she might incur “property damage due to increased electrical rates.” (Petition, pp. 13, 17, 20, 26, 28, 31, 36, 39, 44, 51, 53-54). However, this allegation does not fall within the zone of interests protected by the Atomic Energy Act. As the Commission has ruled in *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976), the interest of a ratepayer in avoiding increased electric rates “does not come within the ‘zone of interest’ protected by the Atomic Energy Act.” *See also Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-21

(1977) (holding that such interests also do not fall within the zone of interests protected by the National Environmental Policy Act).

The Petition also includes an accompanying affidavit from Ms. Britton, containing generalized “concerns for the health and safety of my family because we live so close to the Vermont Yankee Nuclear Power Station.” (Declaration of Anne Britton in Support of CAN’s Standing, ¶ 6). However, this portion of the affidavit does not identify how the license transfer could affect her health and safety. Therefore, this paragraph of the affidavit does not satisfy either the causation or specificity requirements for standing.

Later in her affidavit, Ms. Britton states that she would like to be able to hike and walk on the lands now occupied by Vermont Yankee, is concerned that whoever owns the plant has the experience and financial ability to clean up the site and release it for public use, and believes that the license transfer, therefore, has a direct bearing on the possibility of her being able to enjoy the natural environment. (*Id.* at ¶ 10). However, the interests of Ms. Britton in hiking and walking on lands now occupied by Vermont Yankee are not cognizable by the NRC. These lands are private property. Ms. Britton and other members of the public cannot claim any right or interest in traversing this private property, either now or following decommissioning of the plant. In this regard, Ms. Britton appears to be seeking a remedy that the NRC is not empowered to grant—namely, access to private property. As a result, Petitioner is alleging an “injury” that is not redressable by the NRC and, therefore, is not an appropriate basis for standing to intervene in this proceeding.

Ms. Britton's affidavit also argues that AmerGen's alleged plans to buy 100 reactors could result in "high prices, unsafe conditions at Vermont Yankee in order to keep up profits to support other AmerGen operations, and other practices that would cut costs on site—all of which is dangerous to persons living near Vermont Yankee as I do." (*Id.* at ¶ 12). This issue is outside the scope of this proceeding. As provided in the notice of this proceeding, the scope of this proceeding is limited to AmerGen Vermont's application to transfer the license for Vermont Yankee. Any plan by AmerGen to buy other nuclear plants is not within the scope of this proceeding and, therefore, any alleged injuries flowing from such plans are not cognizable in this proceeding.

Finally, CAN argues that Ms. Britton may incur "radiation dangers from inadequate clean-up or costs-cutting impacts upon workers leading to unplanned and dangerous releases of radiation." (Petition, pp. 13, 17, 20, 26, 28, 31, 36, 39, 44, 51, 53-54). This allegation is simply too general and hypothetical to suffice for standing. Furthermore, even if it is assumed *arguendo* that some costs will be reduced, the Petition is merely speculating that cost cutting might affect safety. However, such speculation ignores the fact that the industry as a whole has been able to improve safety while cutting costs due to improved efficiency and economies of scale. As former Chairman Jackson has stated: "the NRC has not found an overall correlation between cost cutting and a decline in safety performance; rather, in general, the best managed and most cost efficient facilities are those with the best economic and safety performance."^{9/} Thus, contrary to the apparent assumption of the Petitioner, there is no

^{9/} See *NRC Hearing Oversight: Hearing Before the Subcommittee on Clean Air*,
(continued...)

established correlation between reduced costs and adverse impacts on performance, and the Petitioner has not provided any basis for believing that cost reductions at Vermont Yankee would adversely affect safety.

In summary, the Petition engages in rank speculation. The Petitioner has not satisfied its obligation to state with specificity how the license transfer will cause a “concrete” injury to the Petitioner or its members. As a result, the Petition should be denied for lack of standing.

III. THE PETITION DOES NOT SATISFY SUBPART M PLEADING REQUIREMENTS REGARDING THE ISSUES RAISED

A. Introduction

In this Answer, Applicants address each of the numbered, highlighted titles of the issues raised in the Petition.^{10/} To the extent that some of the material in one section of the Petition appears to pertain to a different numbered section, Applicants address such material in the section that appears most relevant.

Accordingly, the structure of Applicants’ response below parallels the structure of the numbered sections in the Petition. Our response to the numbered sections is preceded by a

9/(...continued)

Wetlands, Private Property and Nuclear Safety and the Committee on Environment and Public Works, 105th Cong. 74 (1998) (Prepared Statement of Shirley Ann Jackson, Chairman, Nuclear Regulatory Commission, Appendix A: Enhanced Discussion and Additional Information).

10/ CAN also confusingly refers to “AmerGen of Vermont, LLC” as “AmerGen.” (Petition, p. 1). This Answer refers to AmerGen Energy Company, LLC as “AmerGen,” and AmerGen Vermont, LLC as “AmerGen Vermont” since those were the abbreviations set out in the Application.

discussion of the relevant legal standards for admissible issues in Subpart M proceedings (Section B below) and some general comments regarding the generic defects in the issues raised by Petitioner (Section C below).

B. Legal Standards for Admissible Issues

Pursuant to 10 CFR § 2.1306, a petitioner must, for each of the issues it seeks to have admitted:

- (1) Demonstrate that the issue is within the scope of the proceeding on the license transfer application;
- (2) Demonstrate that the issue is relevant to the findings the NRC must make to grant the application for license transfer;
- (3) Provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue; and
- (4) Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

Failure to comply with any of these requirements requires dismissal of the issue. *Sequoyah Fuels Corp.* (Gore Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-8, 39 NRC 116, 117-18 (1994) (applying Subpart L principles). *See also*, 65 *Fed. Reg.* 5376 (requests for a hearing and petitions to intervene “must comply with the requirements set forth in 10 CFR 2.1306”).

The requirements for admission of issues under Subpart M are essentially the same as the Subpart G requirements for the admission of contentions, *compare* 10 CFR § 2.714(b)(2) (NRC pleading requirements under Subpart G), and the Commission refers to precedent

decided under Subpart G on the admissibility of contentions when reviewing the admissibility of issues under Subpart M. *See, e.g., North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-27, slip op. at 6, n.5 (Oct. 21, 1999) (Seabrook) (citing *Metropolitan Edison Co.* (Three Mile Island Nuclear Generating Station, Unit 1), CLI-83-25, 18 NRC 327 (1983)).

An issue sought to be admitted pursuant to Subpart M must be confined to the subjects delineated by the hearing notice, and issues concerning matters that are not within that defined scope cannot be admitted. *Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979); *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), LBP-98-28, 48 NRC 279 (1998). It is also well-established that an issue that “advocate[s] stricter requirements than those imposed by the regulations” will be rejected as “an impermissible collateral attack on the Commission’s rules.” *See, e.g., Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), LBP-82-106, 16 NRC 1649, 1656 (1982); *accord Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998). *See also Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 & 3), LBP-91-19, 33 NRC 397, 410, *aff’d in part and rev’d in part on other grounds*, CLI-91-12, 34 NRC 149 (1991).

Moreover, an issue will be found to lack sufficient basis if it amounts to, without more, a petitioner’s differing opinion with the NRC as to what applicable regulations should require. *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 303, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff’d in part*, CLI-95-12, 42 NRC 111 (1995). In this regard, the mere citation of an alleged

factual basis for an issue is not sufficient. Rather, a petitioner is obliged “to provide the . . . analyses and expert opinion” or other information “showing why its bases support its [issue].” *Id.* at 306. Similarly, the NRC will not accept an expert opinion as an adequate basis for an issue if it “merely states a conclusion (e.g., the application is ‘deficient,’ ‘inadequate,’ or ‘wrong,’) without providing a reasoned basis or explanation for that conclusion.” *Private Fuel Storage*, LBP-98-7, 47 NRC at 181.

Subpart M requires a petitioner to “[p]rovide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.” 10 CFR § 2.1306(b)(2)(iv). If the petitioner does not believe that the application addresses a relevant issue, the petitioner is required to explain why the application is deficient. *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149, 155-56 (1991). An issue that does not *directly* controvert a position taken in the application is subject to dismissal. *Private Fuel Storage*, LBP-98-7, 47 NRC at 181. *See also Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992). Further, an allegation that some aspect of an application is “inadequate” or “deficient” must be supported by facts and a reasoned explanation of *why* the application is deficient and how the deficiency is material to the proceeding. *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 512 (1990).

As the following makes clear, CAN fails to meet its burden under 10 CFR § 2.1306 with respect to each of the issues it seeks to raise.

C. The CAN Petition Is Defective Because it Alleges, Without Basis, That AmerGen Vermont Will Not Comply with NRC Safety Regulations

As an initial matter, it is a longstanding presumption of American jurisprudence that individuals will obey the law and that administrative agencies will fulfill their statutory duties. *Leroy Fibre Co. v. Chicago, Milwaukee & St. Paul Railway Co.*, 232 U.S. 340, 349 (1914) (recognizing and applying the presumption that an individual “will obey the law”); *United States v. Norton*, 97 U.S. 164, 168 (1877) (“It is a presumption of law that officials and citizens obey the law and do their duty . . .”). See also *Federal Communications Comm’n v. Schreiber*, 381 U.S. 279, 296 (1965) (administrative agencies are entitled to the presumption “that they will act properly and according to law”). To be admissible, an issue founded on the premise that a licensee will not follow regulatory requirements must contain some particularized demonstration that there is a reasonable basis to believe that the licensee would act contrary to the regulations. *General Public Utilities Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 146 (1996).

Despite this, CAN’s entire Petition is riddled with statements implying that AmerGen Vermont will act in defiance of NRC regulatory requirements and threaten safety in order to minimize costs and maximize profits. Petition, p. 13 (“For AmerGen [Vermont] to make a profit on decommissioning, it would require that they cut corners and risk the public health and safety”); p. 17 (“radiation dangers of inadequate clean-up or costs-cutting [sic] impacts upon workers leading to unplanned and dangerous releases of radiation . . .”); p. 25 (“shoddy management practices will be used to make [Vermont Yankee] []competitive, [and] will result in unsafe and dangerous conditions leading to an increased risk of accidents”).

These statements are entirely speculative and unsupported. CAN provides no basis whatsoever for its claim that AmerGen Vermont has or will subordinate safety to production goals or profits. It provides no explanation why the NRC's inspection and oversight programs will be insufficient to monitor AmerGen Vermont's safety philosophy and the safety of Vermont Yankee operations. In essence, CAN's issues are tantamount to an assertion that no nuclear plant should ever be permitted to operate in a competitive market. Such a position is inconsistent with the NRC's financial qualifications requirements and prior precedent in recent license transfer cases^{11/} which recognize that revenues from the sale of electricity will be used as the primary source of funds to cover operational expenses. *See* 10 CFR § 50.33(f)(2).

D. Petitioner's Issues Regarding the Adequacy of Decommissioning Funds Constitute an Impermissible Collateral Attack on NRC Regulations

In Sections II.1.A and II.1.B of its Petition, CAN challenges AmerGen Vermont's financial assurance for decommissioning funding. CAN states that "AmerGen [Vermont's] application does not provide an adequate assurance of its ability to accomplish decommissioning and final site clean-up" and that unspecified license conditions would "cure the harms to CAN and its representative member." (Petition, pp. 12-13). CAN also alleges

^{11/} *See, e.g., GPUN, Inc., et al., to AmerGen, (Three Mile Island, Unit No. 1), Order Approving Transfer of License and Conforming Amendment, 64 Fed. Reg. 19202 (1999) (TMI-1 Order); Boston Edison Co. (Pilgrim Nuclear Power Station, Unit No. 1), Order Approving Transfer of Licenses and Conforming Amendments, 64 Fed. Reg. 24426, 24427 (1999) (Pilgrim Order); Illinois Power Co. (Clinton Power Station), Order Approving Transfer of license and Conforming Amendment, 64 Fed. Reg. 67598 (1999) (Clinton Order),*

that the costs of decommissioning at other plants have been underestimated.^{12/} (Petition, pp. 15-16). CAN asks that the NRC impose unspecified conditions on the license to “establish[] proper parameters for the handling and accumulating of adequate decommissioning funds” (Petition, pp. 13, 17). As discussed below, CAN’s challenges constitute an impermissible collateral attack on NRC regulations and should be denied.

The Application explains that VYNPC will make additional deposits into the decommissioning funds and transfer the funds to AmerGen Vermont at closing so that the value of the funds will be in excess of \$ 280 million, after the trust funds are transferred. For NRC’s purposes, the value of this trust fund at the time of decommissioning would exceed \$358 million, when earnings are credited at a 2% real rate of return as permitted by NRC’s rules. 10 CFR § 50.75(e)(1)(i). *See* Application, p. 25 and Enclosure 12. This prefunding amount exceeds the radiological decommissioning cost estimate calculated using the NRC formula in 10 CFR § 50.75(c) by nearly \$30 million. *Id.* Where, as here, the decommissioning funding assurance significantly exceeds NRC requirements, there is no genuine material issue. *See North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-06, 49 NRC 201 (1999) (the NRC formula amount, utilizing NUREG-1307, Rev. 8, is sufficient to provide decommissioning funding assurance in license transfer cases).

^{12/} CAN supports its allegation with a GAO report which stated that, as of three years ago, 36 of 76 licensees had not accumulated sufficient funds to cover future decommissioning. (Petition, p. 12). Whether the GAO viewed 36 licensees as not having sufficient funds as of three years ago is irrelevant as to whether the Applicants have met NRC regulations regarding decommissioning funding assurance.

CAN does not address or dispute any of this information. It provides no explanation why this arrangement, disclosed by the Application, is insufficient to satisfy the NRC decommissioning funding requirement. Nor does it provide any information to show a genuine dispute on a material issue.

As the NRC confirmed in several recent license transfer proceedings, to satisfy NRC requirements, a transferee is only required to demonstrate that it has sufficient funds to cover the radiological decommissioning cost estimate calculated using the NRC formula in 10 CFR § 50.75(c). *See Safety Evaluation by the Office of NRR, Transfer of Facility Operating License from GPUN, Inc., et al. to AmerGen (TMI, Unit No. 1), Docket No. 50-289 at 8 (April 12, 1999) (TMI-1 Safety Evaluation); see also Pilgrim Order.* CAN appears to be advocating that the Commission impose stricter requirements on the Applicants in connection with the proposed license transfer than those imposed by the Commission's own regulations. Such an argument is an impermissible collateral attack on these regulations. *Seabrook*, 49 NRC at 201, 220. *See also Public Service Company of New Hampshire*, 16 NRC at 1656.

E. Petitioner's Request for an Environmental Impact Study Constitutes an Impermissible Collateral Attack on the Commission's Regulations

CAN appears to be requesting an environmental review on both a programmatic and site-specific level. (Petition, Introduction and Issue II.1.B). CAN first requests that the NRC conduct an "Environmental Impact Study" pursuant to the National Environmental Policy Act (NEPA) on the "potential effects of massive consolidation of nuclear power facility ownership" (Petition, pp. 7, 41, 49). CAN also alleges that the "NRC must conduct an EIS to determine the level of contamination [at] VYNPS" (Petition, p. 14). These issues

constitute an impermissible collateral attack on NRC regulations and are outside the scope of the review for a license transfer.

NRC regulations categorically exclude environmental reviews for license transfers.^{13/} Because license transfers are subject to a categorical exclusion, the NRC has determined that they belong to a category of actions that “does not *individually or cumulatively* have a significant effect on the human environment.” 10 CFR § 51.22(a) (emphasis added). Thus, no environmental review of the license transfer for Vermont Yankee is required on either a programmatic or site-specific level,^{14/} and Petitioner’s arguments to the contrary constitute an impermissible attack on Section 51.22(c)(21).

Furthermore, CAN’s allegations of existing contamination at Vermont Yankee are independent of, and have no nexus to, the Application. Even if Petitioner’s allegations of

^{13/} “The following categories of actions are categorical exclusions:

* * *

Approvals of direct or indirect transfers of any license issued by NRC and any associated amendments of license required to reflect the approval of a direct or indirect transfer of an NRC license.”

10 CFR § 51.22(c)(21).

^{14/} CAN cites to *Limerick Ecology Action, Inc.*, 869 F.2d 719 (3rd Cir. 1989), as support that “[f]inding that a license transfer may provide adequate protection of public health and safety under [the AEA] does not preclude the need for further consideration under NEPA” (Petition, p. 14, n.18). However, CAN overlooks dispositive language in that case. *Limerick Ecology* states that “[a]lthough NEPA requires the [NRC] to undertake ‘careful consideration,’ of environmental consequences, under *Baltimore Gas* it may issue a rulemaking to address and evaluate environmental impacts that are ‘generic,’ i.e., not plant-specific.” *Id.* at 723 (internal citations omitted). The Commission has done so with respect to license transfers. Thus, *Limerick Ecology* does not support CAN’s assertion that the NRC must conduct an EIS.

contamination are accepted *arguendo* as true,^{15/} such alleged contamination would have to be resolved, even if the license for Vermont Yankee is not transferred.^{16/} Therefore, Petitioner has raised a matter that is independent of, and outside the scope of this proceeding, and it should be rejected. *See Portland General Electric Co.*, 9 NRC at 289 n.6; *Northeast Nuclear Energy Co.*, 48 NRC at 279.

F. Petitioner Has Not Provided a Sufficient Basis to Challenge the Technical Qualifications of AmerGen Vermont

CAN raises two technical qualification concerns. (Petition, Issue II.2.A&B).^{17/} First, CAN alleges that AmerGen Vermont is not qualified to own and operate aging reactors like Vermont Yankee. (Petition, pp. 18-19). This argument is clearly unsupported and without basis. The Application states that after the transfer, “the plant staff, including senior managers, will be substantially unchanged.” (Application, p. 17). Because the technical qualifications of the existing staff comply with Commission requirements, and because substantially all site personnel will remain at Vermont Yankee, the technical qualifications of AmerGen Vermont will comply with NRC requirements.

^{15/} CAN’s Petition provides no information indicating that there is any contamination of the Vermont Yankee site. (Petition, p. 14).

^{16/} CAN appears to challenge the adequacy of the documentation required by NRC’s regulations at 10 CFR § 50.75(g)(1), which requires licensees to maintain records of any spills or contamination to allow for proper decommissioning. CAN provides no basis to suggest that this documentation is insufficient or any basis to impose requirements beyond the regulations. *See also* Section H.2 of this Answer.

^{17/} This section of the Petition also raises other unrelated allegations pertaining to maintenance and outage costs, cuts in the work force, and the need for leak detection equipment. (Petition, pp. 19, 22 and 24). These allegations are treated in later sections of this Answer.

Second, CAN raises allegations challenging the technical qualifications of AmerGen's parents—PECO and British Energy. (Petition, pp. 21-25). This allegation is irrelevant, because the only issue before the Commission is whether AmerGen Vermont is technically qualified to operate Vermont Yankee. PECO and British Energy are not seeking to be licensees of Vermont Yankee. The Application for the license transfer of Vermont Yankee does not rely upon the experience of either PECO or British Energy to establish the technical qualifications of AmerGen Vermont. (See Application, pp. 16-20). Therefore, any issue regarding the experience of PECO or British Energy is outside the scope of this proceeding.

In any case, CAN's allegation is inconsistent with previous NRC findings. In particular, the NRC has decided that: (1) AmerGen is technically qualified to operate Clinton and TMI-1,^{18/} and (2) PECO is technically qualified to operate Limerick and Peach Bottom. Moreover, AmerGen is currently successfully operating Clinton and TMI-1, and PECO is successfully operating Limerick and Peach Bottom, thereby demonstrating their technical qualifications in practice.^{19/}

Therefore, CAN's Petition should be denied to the extent CAN is challenging AmerGen Vermont's technical qualifications to own and operate Vermont Yankee.

^{18/} See *TMI-1 Order; TMI-1 Safety Evaluation; CPS Order; Safety Evaluation by the Office of Nuclear Reactor Regulation, Proposed Transfer of Clinton Power Station Operating License from Illinois Power Co. to AmerGen Energy Co., LLC*, Docket No. 50-461 (November 24, 1999) (Clinton Safety Evaluation).

^{19/} In two instances, CAN uses a *draft* of a BNII report as a springboard to criticize British Energy. However, the findings cited by CAN from the draft report do not appear in the final BNII Report. (Compare Petition Exhibit 21, p. 12, ¶ 59, and p. 28, ¶ 134 from the draft report (which are cited in footnotes 29 and 30 on page 24 of the Petition) with the final BNII Report, which is provided as Exhibit 22 of the Petition).

G. Petitioner's Allegation That AmerGen Vermont Will Significantly Reduce the Size of the Work Force is Baseless

In Sections II.2.B.1 and II.2.B.2 of the Petition, CAN alleges that, to reduce costs in a competitive environment, AmerGen Vermont will reduce the Vermont Yankee work force by "approximately 20-30%," and will require excessive overtime of the remaining staff. (Petition, pp. 24, 29). For support, CAN cites to newspaper articles which tout work force reductions allegedly planned by AmerGen at other plants: *i.e.*, 20% at Clinton by 2002; and 10% at Oyster Creek. (Petition, Exhs. 24, 25).

Initially, it should be emphasized that CAN provides *no* support for any alleged work force reduction at Vermont Yankee. In fact, the allegation is inconsistent with the commitments made in the Application. In particular, the Application commits that the plant staff, including senior managers, will be substantially unchanged. (Application, p. 17).

Further, CAN provides no information indicating that the existing controls on overtime or NRC's oversight will be inadequate. CAN does not address the NRC's policy on fatigue and limitation on staff overtime, as established in Generic Letter 82-12, or the existing implementation of these provisions at Vermont Yankee.^{20/} Nor is there any basis to advocate

^{20/} Further, CAN's claims that British Energy has a "commitment to excessive overtime" is inaccurate and irrelevant. British Energy does not hold an NRC license, nor is it seeking to do so. Moreover, although BE Inc., which is wholly-owned by British Energy, has representatives on the AmerGen Vermont Management Committee, it has no final decision making authority over any NRC safety issue at Vermont Yankee, including compliance with the Atomic Energy Act, NRC regulations, the operating license, technical specifications, and the UFSAR. *See* Application, pp. 9-10, Enclosure 4, p. 4.

measures beyond the existing regime. In connection with the recent transfer of Beaver Valley Power Station to FirstEnergy, the NRC explained:

As a general matter, business decisions regarding plant staff, beyond the shift operating crew, personnel qualification, and organizational structure requirements which are specified in the TSs and UFSARs, are not specifically subject to the NRC's regulatory regime. . . . It is the licensee's responsibility to provide sufficient resources to ensure that [NRC] requirements are met. . . . Moreover, the NRC will be engaged in ongoing and routine inspection activities at Beaver Valley to ensure that BVPS-1 and 2 continue to be operated and maintained safely in accordance with the existing license requirements.

Safety Evaluation by the Office of NRR, Transfer of Facility Operating License from Duquesne Light Company to Pennsylvania Power Company et al., (Beaver Valley Power Station, Units 1 and 2), Docket Nos. 50-334 and 50-412, at 9 (Sept. 30, 1999). In summary, the NRC has no requirements on work force size, with the exception of the shift operating crew. CAN has not contended that AmerGen Vermont will violate these requirements.

CAN also has provided no basis for contending that the ultimate size of the Vermont Yankee work force will be insufficient to ensure the safety of the plant. To the contrary, the very sources that CAN cites indicate that the work force reductions at Clinton and Oyster Creek will not impact safety. For example, one of CAN's sources states the reductions at Clinton will be implemented "through natural attrition, such as retirement" and are deemed appropriate because "Clinton has a larger staff than other nuclear stations of comparable size." (Petition, Exh. 24). ^{21/} Another one of CAN's sources states that the reduction at Oyster Creek

^{21/} The reduction in the size of the contractors at Clinton (Petition, p. 27) is also attributable to factors that do not pertain to the license transfer—*i.e.*, Clinton was
(continued...)

is because “many of the same duties performed by plant personnel are handled by AmerGen’s Mid-Atlantic Regional Operations Group in Wayne, Pa.” (Petition, Exh. 25). It also states that the work force reduction at Oyster Creek will affect “[d]epartments unrelated to the physical operations of the plant, such as financial and human resources. . . . [O]perations, maintenance, and radiological safety will not be affected by layoffs.” *Id.* These reasons do not relate to safe operations, and provide no basis for questioning the safety of AmerGen Vermont’s plans for staffing size at Vermont Yankee.

In fact, essentially all licensees have reduced their work force size during recent years. There is nothing improper in doing so. Furthermore, many plants and the industry as a whole have performed better after having reduced their work force and their costs. In general, the least cost producers in the industry are also some of the best performers. *NRC Hearing Oversight*, 105th Cong. 74 (“the NRC has not found an overall correlation between cost cutting and a decline in safety performance; rather, in general, the best managed and most cost efficient facilities are those with the best economic and safety performance”). In sum, there is no correlation between low cost and poor performance, and CAN has not provided any support to the contrary.

21/(...continued)

coming out of an outage lasting more than two years, which required substantial increases in personnel beyond normal levels to perform required work during the outage.

H. Petitioner's Issues Related to the Safety of Plant Conditions and NRC Oversight Are Not Cognizable

1. Issues Regarding the Plant and Programs of Vermont Yankee Are Beyond the Scope of the Pending License Transfers Application

In Section II.3 of its Petition (pages 32-37), CAN makes numerous allegations concerning the plant and existing or historic programs at Vermont Yankee.^{22/ 23/} For example, CAN contends that “an analysis must be performed to determine the competency and accuracy of Vermont Yankee programs” (Petition, p. 35); that a “full scale engineering review” should be performed (*id.* at 36); and that a “vertical slice analysis” should be conducted prior to approval of the license transfer. *Id.* As a result, CAN argues that, prior to license transfer, the existing station should be “shown to be safely operable within its design basis.” (Petition, p. 37). As explained below, none of these types of allegations or contentions is within the scope of this proceeding, and none is supported by an adequate basis.^{24/}

^{22/} The heading of this section of CAN's Petition asserts that an “Environmental Impact Study” is warranted before the license transfer application may be approved. (Petition, p. 32). However, nowhere in Section II.3 of the Petition is there any mention of NEPA, or any explanation of why an environmental impact study is required. CAN does not identify any document or expert opinion supporting the need for an environmental impact study, or provide any other information sufficient to show a genuine dispute over a material environmental issue. Further, as discussed in Section E, *supra*, this issue is barred by 10 CFR § 51.22(c)(21), which categorically excludes license transfers from environmental review.

^{23/} Other sections of the Petition contain similar allegations. For example, CAN argues that leak detection equipment throughout the industry is not sufficiently accurate, and that the license transfer to AmerGen Vermont should include a requirement to modify this equipment. (Petition, p. 19). CAN also argues that Vermont Yankee has not solved a “problem of lack of irradiated fuel storage capacity. (Petition, p. 40).

^{24/} For example, CAN refers to a few repair or refurbishment activities at Vermont Yankee
(continued...)

The Application (p. 1) explicitly states that “[n]o physical changes will be made to Vermont Yankee as a result of this transfer, and there will be no significant change in the day-to-day operations of the facility.” Similarly, the notice of this proceeding states that “[n]o physical changes to the Vermont Yankee facility or operational changes are being proposed in the application.” 65 *Fed. Reg.* 5376. Thus, Petitioner’s issue should be rejected because there is no nexus between the condition of the existing plant and programs at Vermont Yankee, and the scope of the license transfer as described in the Application and noticed in this proceeding. See *Portland General Electric Co.*, 9 NRC at 289 n.6; *Northeast Nuclear Energy Co.*, 48 NRC at 279.

Furthermore, the issues raised by the Petition are not related to the standards for license transfer. The scope of a license transfer proceeding is governed by 10 CFR § 50.80(c), which states that the NRC will approve a transfer if it finds that the proposed transferee is qualified to be the holder of the license and that the transfer is consistent with applicable law. The issues identified in the Petition regarding the existing plant and programs at Vermont Yankee pertain to neither the technical nor financial qualifications of AmerGen Vermont. Nothing in 10 CFR § 50.80 or the NRC’s precedents in license transfer cases requires or permits review of the existing design or program for the plant, or allows a license transfer proceeding to be turned

24/(...continued)

and suggests that there are aging issues warranting a review. In particular, CAN asserts that inter-granular stress corrosion cracking (IGSCC) of core shrouds is a bell weather for problems in 25 backup safety systems. However, CAN identifies no documents or expert opinion supporting this claim. Indeed, CAN refers to problems at Vermont Yankee in the past tense and does not even state that there are current issues. See, e.g., Petition, p. 32.

into a broad relicensing inquiry as CAN advocates. Since Petitioner's issue is unrelated to the findings NRC is required to make, this issue should be rejected. *See Portland General Electric Co.*, 9 NRC at 289 n.6; *Northeast Nuclear Energy Co.*, 48 NRC at 279.

Nor is there any nexus between CAN's allegations and the license transfer. The existing hardware and programs at Vermont Yankee will remain, even if the license is not transferred. Because the Petitioner is complaining about pre-existing conditions that are unconnected to the license transfer, such complaints are outside the scope of this proceeding and should be rejected. *See Portland General Electric Co.*, 9 NRC at 289 n.6; *Northeast Nuclear Energy Co.*, 48 NRC at 279.

Any concerns the Petitioner may have with respect to the existing plant and programs can and should be addressed through other processes, not as part of the license transfer proceeding. In fact, many of the concerns that CAN raises have already been addressed by the NRC in response to a prior 2.206 petition by CAN.^{25/} *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), DD-98-13, 48 NRC 395 (1998); *Issuance of Director's Decision Under 10 CFR 2.206*; 63 *Fed. Reg.* 69685 (1998).^{26/} In particular:

^{25/} CAN conveniently makes no mention of this Director's Decision, which disposes of its 2.206 petition.

^{26/} CAN also fails to address or acknowledge other current documents which belie any basis for CAN's issues, and thus CAN fails to demonstrate that there is any genuine material dispute with respect to these matters. For example, CAN's allegations concerning cracks in secondary containment concrete were previously addressed by the NRC in a December 23, 1998 letter to William Sherman of the State of Vermont, which stated: "Our review identified that no safety concerns existed regarding the cracks or the repairs and we determined that these issues did not merit additional NRC review." CAN also refers to the 1998 SALP for Vermont Yankee to suggest there are problems
(continued...)

- The Director’s Decision addressed CAN’s contention that a broad engineering or vertical slice review is necessary. In the Director’s Decision, the NRC specifically concluded that an additional vertical slice safety assessment was not necessary. 48 NRC at 410-11.
- The Director’s Decision addressed CAN’s concerns with safety evaluations (*id.* at 400-401), the operational experience review program (*id.* at 404-406), perimeter security (*id.* at 408), design basis documentation (DBD) and final safety analysis report (FSAR) verification programs (*id.* at 398, 409-10), and daily event reports (*id.* at 412).^{27/}
- The Director’s Decision addressed CAN’s claims that Vermont Yankee has had an undue number of instances of operation outside of design bases. (Petition, pp. 34-35). The Director’s Decision states that “the Licensee’s program to review and document the plant’s design basis has been rigorous, as evidenced by the number and significance of the issues identified during the development and validation of system DBDs. The NRC Staff considers that the number and significance of the issues, some of which required reporting, demonstrate a desirable situation where problems are identified and resolved.” *Id.* at 398.

26/(...continued)

with radiological controls. However, NRC Inspection Report 99-09 states that “VY continued to maintain a good radiation protection program.” Additionally, the initial Plant Performance Reviews (PPR) issued for Vermont Yankee after the 1998 SALP concluded that “[t]he radiation program was effectively implemented,” and the Fall 1999 mid-cycle PPR identifies no radiation safety issues requiring heightened scrutiny. *See* Letter from R. Crlenjak to R. Wanczyk, *Plant Performance Review – Vermont Yankee* (April 9, 1999); Letter from S. Coffin to R. Wanczyk, *Mid-Cycle Plant Performance Review – Vermont Yankee Nuclear Power Station* (Sep. 30, 1999).

27/ Not only does CAN fail to acknowledge the Director’s Decision, but it also fails to address other current documents belying CAN’s concerns. In NRC Inspection Report 99-11, the NRC states, “We noted that the design bases reconstitution effort and the Final Safety Analysis Report Verification Program were effective and comprehensive.” With respect to perimeter security, NRC Inspection Report 98-12 states, “Performance testing of the perimeter intrusion detection system (PIDS), by the licensee and NRC program office personnel, resulted in appropriate intrusion alarms being generated in all zones tested. In addition, the licensee demonstrated proper searches of packages entering the protected area through the access control point.” By failing to address such readily available documents, CAN totally fails to demonstrate that there is any genuine issue or dispute.

The fact that CAN's issues were identified and addressed by NRC well before submittal of the Application shows that these allegations relate to plant operations under the current license, and not to any matter raised by the license transfer. Furthermore, this fact shows that CAN is inappropriately trying to circumvent NRC's established processes for dealing with such issues. As explained in *Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1)*, ALAB-619, 12 NRC 558, 570 (1980), 10 CFR § 2.206 is the exclusive remedy for a petitioner who claims that a facility does not comply with the regulations, when the claims in question have no discernable relationship to the pending amendment proceeding.

In sum, the issues in Section II.3 of CAN's Petition are outside the scope of the proceeding. Accordingly, this section of CAN's Petition must be rejected.

2. Issues Regarding the Adequacy of Oversight by NRC Region I Are Beyond the Scope of the Pending License Transfer

In Section II.4 of its Petition (page 37), CAN contends that an independent evaluation of Vermont Yankee is necessary because NRC Region I has abdicated its regulatory oversight. For several reasons, this allegation is also beyond the scope of this proceeding and should be rejected pursuant to § 2.1306(b)(ii).^{28/}

Issues regarding the adequacy of NRC staff oversight do not fall within the scope of 10 CFR 50.80(c), which limits the scope of license transfer proceedings to the qualifications of

^{28/} CAN's allegation also lacks any basis. CAN identifies no deficiency with the current management of Region I, identifies no deficiency in the Millstone lessons learned, and ignores the fact that Vermont Yankee has had an NRC-sponsored architect-engineer inspection of its design basis.

the applicant and whether the license transfer is otherwise consistent with applicable laws and regulations. Additionally, such issues are not within the scope of the issues identified in the notice of this proceeding, which are similarly limited to matters pertaining to the license transfer. Therefore, these issues should be rejected. *See Portland General Electric Co.*, 9 NRC at 289 n.6; *Northeast Nuclear Energy Co.*, 48 NRC at 279.

CAN also argues that an independent analysis is necessary in order to “preserve ‘institutional’ memory concerning spills, contamination, and other decommissioning and site clean-up related matters.” (Petition, p. 38). However, since the license transfer application indicates that substantially all of the site personnel will remain at Vermont Yankee when the transfer becomes effective (Application p. 16), there is no basis to assume—and certainly no basis advanced by CAN other than unfounded speculation—that institutional memory will be lost. CAN’s argument also essentially challenges the adequacy of the NRC regulation at 10 CFR § 50.75(g)(1), which requires licensees to maintain records of any spills and contamination to preserve this information for decommissioning.^{29/} As the application indicates, all such records will be transferred to AmerGen Vermont. (Application p. 19). CAN offers nothing—no documents, expert opinion or other supporting information—demonstrating a genuine dispute over a material issue regarding the adequacy of these provisions.

Accordingly, the issues raised in Section II.4 of the Petition are outside the scope of the proceeding and are without any basis. Therefore, these issues should be rejected.

^{29/} Further, the NRC has inspected the adequacy of these records at Vermont Yankee. *See* NRC Inspection 99-08 (November 22, 1999).

I. Petitioner's Claim That NRC Should Consider AmerGen's Acquisition of Multiple Nuclear Plants Is Outside the Scope of this Proceeding

In Sections II.5 and II.6 of the Petition, CAN alleges that AmerGen is committed to acquiring up to 100 American nuclear plants.^{30/} (Petition, pp. 10, 41, 45). CAN argues that the NRC has been "blind to the accumulated risks" of, and should evaluate, the health and safety consequences of AmerGen's potential ownership of as many as 100 nuclear plants. (Petition, pp. 8, 41). This allegation is not only baseless, the issue is clearly outside the scope of this proceeding.

This proceeding is related solely to the transfer of the operating license for Vermont Yankee to AmerGen Vermont. It would not be proper for the NRC to engage in a speculative inquiry here concerning the potential plans of AmerGen (who is not an applicant here) regarding the acquisition of additional nuclear plants. To the extent that Petitioner wishes to raise an issue concerning the consolidation of the nuclear power industry, and the role of AmerGen and others in connection with such consolidation, this is a generic issue that should be addressed in a generic proceeding.^{31/}

^{30/} As a basis for the allegation, Petitioner cites a web page. However, the cited web page does not support Petitioner's allegation. Instead, the web page merely states "British Energy has identified over 100 nuclear plants in the U.S. as potential acquisitions, and hopes to get close to completing a deal by the end of the year."

^{31/} In fact, in Staff Requirements Memorandum COMNJD-99-06 dated February 10, 2000, the Commission directed the Staff to assess the policy implications of industry consolidation. However, this is a generic assessment, it does not focus on this license transfer, and it does not affect this proceeding. As discussed above, there is no basis, in this proceeding, for the Commission to engage in a speculative inquiry concerning AmerGen's plans for purchasing additional plants.

J. Petitioner's Request for Antitrust Review In Connection With the Pending Application Is Neither Authorized Nor Warranted

In Section II.6 of the Petition, CAN refers to Section 105 of the Atomic Energy Act and urges the NRC to “exercise” the “antitrust investigative power which Congress mandated in all licensing actions” to evaluate this license transfer. (Petition, p. 46). CAN’s reliance on the Atomic Energy Act for antitrust authority over any licensing action relating to Vermont Yankee is misplaced.

In 1970, Congress added antitrust amendments to Section 105c of the Act, requiring the NRC to conduct antitrust reviews of applications for construction permits (CPs) and initial operating licenses (OLs) issued pursuant to Section 103 of the Act. Congress did not give the NRC such authority for CPs and OLs granted under Section 104 of the Act. Vermont Yankee was licensed under Section 104 of the Act. Accordingly, Vermont Yankee is exempt from any NRC antitrust review pursuant to the Act. *See, e.g., NUREG-1574, NRC Standard Review Plan On Antitrust Reviews, Sections 1.1, 1.3, & 1.5 (Dec. 1997); compare NRC Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44071, 44074 (1997).*

Even if Vermont Yankee were licensed under Section 103 of the Act, the Commission has determined that antitrust review of post-operating license transfers is not required by the Act. Additionally, the Commission has concluded that, from a policy perspective, such a review should not be conducted. *Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999).* Therefore, based upon the Commission’s

decision in *Wolf Creek*, the issue raised by the Petitioner is outside the scope of this proceeding.

In this regard, it should be noted that antitrust issues will not go unreviewed. In particular, antitrust issues are within the jurisdiction of the Antitrust Division of the U.S. Department of Justice, the Federal Trade Commission and FERC. There is no reason for NRC to duplicate the review by these other agencies.

For all of the above reasons, the antitrust issues raised by Petition are outside the scope of this proceeding and should be rejected.

K. Petitioner's Claims Regarding AmerGen's Financial Qualifications Constitute an Improper Attack on the Commission's Regulations

1. Financial Qualifications for Operation of Vermont Yankee

On pages 22, 40-42, 46-47, and 52-53 of the Petition, CAN seems to suggest that AmerGen (apparently as the parent of AmerGen Vermont) should plan for lengthy, concurrent outages at plants with which it is involved, including Vermont Yankee, and that the \$110 million available to AmerGen under terms of an agreement with PECO and British Energy is insufficient "to safely operate its fleet of reactors." (Petition, p. 52). Additionally, CAN argues that AmerGen Vermont must demonstrate its ability to finance maintenance costs associated with an "aging" plant. (Petition, p. 19).

CAN's arguments are an attack on the Commission's regulations in 10 CFR § 50.33(f)(2), which govern the financial qualifications of applicants. This section requires financial data for the first five years of operation. AmerGen Vermont's submission of information related to its financial qualifications (Application pp. 20-22) fully complied with

Section 50.33(f)(2) and the NRC's "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," NUREG-1577, Rev. 1 (SRP). The NRC has previously found that the same type of financial information submitted here was sufficient for it to make an informed and reasoned decision and find AmerGen financially qualified to own and operate a nuclear facility. *See TMI-1 Order; TMI-1 Safety Evaluation; Clinton Order; Clinton Safety Evaluation*. CAN does not raise any issue challenging these projections and, in fact, admits that AmerGen Vermont may meet NRC requirements.^{32/} (Petition, p. 42). Thus, CAN has provided no basis for a hearing regarding AmerGen Vermont's projections.

NRC regulations do not require a showing of financial capability to sustain lengthy simultaneous outages at multiple plants. Nor does CAN provide bases—any references, expert opinions or other supporting information—to show that lengthy simultaneous outages of AmerGen's plants are likely or that the \$110 supplemental funding provided is inadequate. The additional information submitted by AmerGen Vermont in further support of its financial qualifications (*e.g.*, the availability of \$110 million in additional funds from British Energy and PECO) is supplemental in nature. Petitioner is essentially asserting that AmerGen Vermont must provide financial information *beyond* that which is required by NRC's regulations and

^{32/} CAN argues that financial information should not be designated as proprietary, because "this information is relevant and in the public interest." (Petition, pp.7-8). However, CAN provides no basis for public disclosure of proprietary financial information, and its position is unsupported given its admission that AmerGen Vermont may meet NRC's financial qualification requirements.

prior Commission decisions. Petitioner's claim, therefore, should be dismissed as a matter of law. *See Public Service Company of New Hampshire*, 16 NRC at 1656.

Finally, Petitioner's argument does not accurately reflect the Application. In addition to the \$110 million guarantee from PECO and British Energy to AmerGen, AmerGen has warranted that it will provide funding to AmerGen Vermont whenever the Management Committee for AmerGen Vermont determines that such funds are needed to protect the public health and safety or comply with NRC requirements. (Application, Encl. 8). This obligation is significant, since AmerGen itself (separate from PECO and British Energy) is a substantial company. As discussed in the Application (pp. 5-6), AmerGen is the owner of two nuclear plants, TMI-1 and Clinton, which have an installed capacity of more than 1700 MWe. Furthermore, in addition to any payments from AmerGen, AmerGen Vermont will have its own resources from which to fund expenses. Petitioner's issue ignores this information and, therefore, is insufficient to establish a genuine issue of material fact for hearing.

2. Coverage under the Price-Anderson Act

CAN also claims that compensation for events under the Price-Anderson Act terminates when the operating license is terminated and does not cover decommissioning. (Petition, pp. 52-53). According to the Petition, some sort of "special account should be created to hold the partners' assets" because of "the lack of adequate insurance coverage under Price Anderson to cover complete cleanup." (Petition, p. 52). This position is based solely on a Declaration of David A. Lochbaum, included as Exhibit 2 to the Petition, which states in pertinent part that "Price-Anderson liability coverage ends when the operating license is

terminated even though radioactive material could remain at the site in harmful amounts.” (*Id.* at 52-53).

As a matter of law, Mr. Lochbaum is simply incorrect. First, it should be noted that an operating license for a nuclear power plant is not terminated, merely because a licensee has permanently ceased operation. Specifically, under 10 CFR § 50.82(a)(11), the Part 50 license for a nuclear power reactor may not be terminated until “[t]he terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E.” Therefore, Petitioner’s argument that there may be harmful amounts of radioactivity on site that may need to be cleaned-up following license termination is simply inconsistent with the requirements of Section 50.82(a)(11).

Second, prior to license termination, the protection provided by the Price-Anderson Act will continue, even though the plant may have ceased permanent operation and is engaged in decommissioning. The NRC indemnification agreements required by Section 170(c) of the Atomic Energy Act, which cover all public liability arising from a nuclear incident, remain in effect until a license is terminated and all radioactive material has been removed from the site.

Article VII of the NRC indemnification agreements specifically states:

The term of this agreement . . . shall terminate at the time of expiration of that license . . . provided that . . . the term of this agreement shall not terminate until all the radioactive material has been removed from the location and transportation of radioactive material from the location has ended

See 10 CFR § 140.92. Further, the indemnification agreements require licensees to maintain specified amounts of liability insurance (*id.* at Art. VIII) and the NRC has required licensees to obtain NRC approval before reducing this coverage. *See, e.g., 60 Fed. Reg. 57460 (1995)* (exemption for Trojan Nuclear Plant).

In accordance with 10 CFR § 140.92, Art. IV.2, AmerGen Vermont and VYNPC will request approval of the assignment and transfer of the Price-Anderson Indemnity Agreement for Vermont Yankee to AmerGen Vermont upon consent of the proposed license transfer and removal of VYNPC and its Sponsors from the related bond. (Application p. 34). The indemnity agreement that AmerGen Vermont must enter into with the NRC provides an NRC guarantee of the deferred premiums, subject to reimbursement or liens on the licensee property. 10 CFR § 140.22, 10 CFR § 140.92, Art. VIII. Further, prior to the license transfer, AmerGen Vermont will obtain all required nuclear property damage insurance pursuant to 10 CFR 50.54(w), and nuclear liability insurance pursuant to the Price-Anderson Act and 10 CFR Part 140. (Application p. 35).

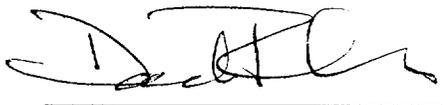
NRC does have under consideration a proposed rule that would reduce, but not eliminate, the amount of onsite and offsite liability insurance required to be maintained by a licensee of a reactor that is permanently shutdown. *See Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 62 Fed. Reg. 58690 (1997)*. However, this proposed rule would not affect the government's indemnification obligations under the Price-Anderson Act for offsite consequences. *See 62 Fed. Reg. at 58692-93*. Therefore, even if the proposed rule is enacted by the NRC, there still will be requirements for onsite insurance,

offsite liability insurance, and government indemnification for offsite consequences under the Price-Anderson Act for reactors undergoing decommissioning.

CAN provides no discussion whatsoever of this comprehensive set of requirements, coverage, and guarantees, and no basis to suggest that there is any material issue to be set for hearing. Thus, there is no basis for any issue pertaining to a “lack of adequate insurance coverage under Price-Anderson.”

CONCLUSION

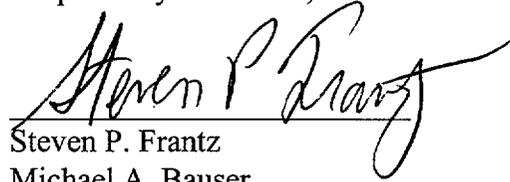
For the reasons set forth above, Applicants respectfully request that the Commission deny the Petition filed by Citizens Awareness Network on the ground that CAN lacks standing, and has failed to submit a valid issue in accordance with the pleading requirements of 10 CFR § 2.1036. Although Applicants do not believe that any hearing is warranted, Applicants respectfully request that if the Commission determines otherwise, any hearing should be initiated promptly in accordance with the procedures set forth in Subpart M.



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CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicants' Answer to Citizens Awareness Network's Request for Hearing and Petition to Intervene were served upon the persons listed below by e-mail or facsimile, with a conforming copy deposited in the U.S. mail, first class, postage prepaid, this 3rd day of March, 2000.

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington, D.C. 20555-0001
(E-mail: secy@nrc.gov)

Office of the Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(E-mail: hrb@nrc.gov)

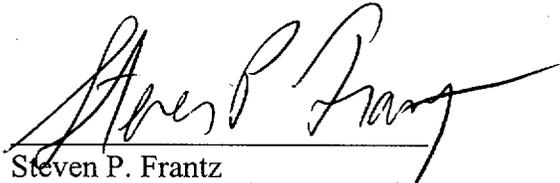
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C O U N S E L O R S A T L A W

Steven P. Frantz
202-467-7460

March 3, 2000

Secretary of the Commission
Attention: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20055

Re: In the Matter of Vermont Yankee Nuclear Power Corp. and AmerGen Vermont, LLC,
Vermont Yankee Nuclear Power Station, Docket No. 50-271 (License Transfer)

Dear Ms. Vietti-Cook:

Please find enclosed the "Applicant's Answer to Citizens Awareness Network's Request for Hearing and Petition to Intervene."

Sincerely,



Steven P. Frantz
Counsel for AmerGen Vermont, LLC

Enclosures

1-WA/1373071.1